

Weekly Summary of Cases National Labor Relations Board

Week of June 7-11, 2010, W-3264

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Summarized Board Decisions

Service Employees International Union, Nurses Alliance, Local 121RN (Pomona Valley Hospital Medical Center) (21-CB-14428, 355 NLRB No. 40) Pomona, CA, June 8, 2010. [HTML] [PDF]

A Board majority reversed the administrative law judge and found that the union unlawfully coerced employees by circulating a flyer that implied they would be fired or demoted if they stopped paying union dues, even though the union security clause had expired. Member Pearce dissented on the grounds there was insufficient evidence of coercion.

In a separate ruling, Member Becker denied the Charging Party's motion to recuse himself from the case because it involved a local of the SEIU and the National Right to Work Legal Defense Foundation. He also addressed similar recusal motions in 12 other cases pending before the Board, granting one and denying the remaining 11.

Administrative Law Judge William G. Kocol issued his decision November 19, 2008. Charge filed by an Individual. Chairman Liebman and Members Becker and Pearce participated.

American Golf Corp. d/b/a Badlands Golf Course (28-CA-18753, et al.; 355 NLRB No. 42) Las Vegas, NV, June 10, 2010. [HTML] [PDF]

On remand from the U.S. Court of Appeals for the Ninth Circuit, the Board reversed its 2007 decision that the employer lawfully withdrew recognition from the union about 6 months after the Board had ordered it to resume bargaining. The 2007 ruling, which applied the multi-factor test set out in the 2001 ruling in *Lee Lumber*, found that the total time spent and number of bargaining sessions "overwhelmingly" favored finding that a reasonable period for bargaining had elapsed.

However, the court determined that the evidence did not support that finding. In response, the Board rebalanced the factors and found that the parties had not bargained for a reasonable period before the employer withdrew recognition, thereby violating Section 8(a)(5) of the National Labor Relations Act.

Charges filed by Laborers' International Union of North America, Local 872. Chairman Liebman and Members Schaumber and Pearce participated.

Dickens, Inc. (29-CA-29080, et al, 355 NLRB No. 44) Commack, NY, June 10, 2010. [HTML] [PDF]

The Board found that the employer, by its owner, violated the Act by falsely accusing an employee of theft and by calling the police in order to harass him because he had prevailed in a prior unfair labor practice proceeding against the employer. The Board remanded to the judge the allegation as to whether the employer violated the Act by laying off two employees because one had prevailed in the prior proceeding and the other had cooperated with the Region in its investigation of the prior case. The Board instructed the judge to determine whether the employer had relied on the employees' lack of fluency in English in selecting them for layoff. The Board rejected the employer's assertion that the judge prejudiced its defense by his conduct of the trial proceedings.

Administrative Law Judge Raymond P. Green issued his decision June 8, 2009. Charges were filed by an Individual. Chairman Liebman and Members Pearce and Schaumber participated.

Pacific Northwest Regional Council of Carpenters (19-CD-499; 355 NLRB No. 45) Moses Lake, WA, June 11, 2010. [HTML] [PDF]

This case concerned whether scaffold tending work done by Brand Energy Services, LLC, at the REC Silicon Plant expansion project in Moses Lake, Washington, should be performed by employees represented by the Pacific Northwest Regional Council of Carpenters (Regional Carpenters) or employees represented by the Laborers International Union (LIUNA). Under the Act, the Board can rule on which employees should perform the disputed work only if the Board first finds that the parties have not agreed to a method for voluntary adjustment of the dispute. In this case, it was undisputed that Brand Energy and LIUNA were bound by the Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the Plan), a method for the voluntary adjustment of work assignment disputes. The Board found that Regional Carpenters was also bound by the Plan, despite its contentions to the contrary. Therefore, as it found that all parties were bound to a method for voluntary adjustment of the dispute, the Board quashed the notice of hearing. Consequently, the Board did not rule on which employees should perform the work, but left the dispute to be resolved by the parties' agreed-upon method.

Charge filed by Brand Energy Services, LLC. Chairman Liebman and Members Schaumber and Pearce participated.

San Miguel Hospital Corp. d/b/a Alta Vista Regional Hospital (28-CA-22280; 355 NLRB No. 43) Las Vegas, NM, June 11, 2010. [HTML] [PDF]

The Board found that the employer violated the Act by failing to provide relevant information requested by the union, changing terms and conditions of employment without providing the union with notice or an opportunity to bargain, and discharging an employee pursuant to the unilateral change in terms and conditions of employment. However, it also found that the record was insufficient to establish that the employer violated the Act by denying an employee's request for union representation at a grievance meeting, informing employees that their right to union representation was being denied, dealing directly with an employee concerning her grievance, and unilaterally changing its practice of allowing employees to have another employee present during investigative or disciplinary meetings.

Administrative Law Judge John J. McCarrick issued his decision November 27, 2009. Charge filed by District 1199NM, National Union of Hospital and Healthcare Employees. Chairman Liebman and Members Schaumber and Pearce participated.

Jerry Ryce Builders, Inc. (13-CA-43917, 43918; 355 NLRB No. 41) Chicago, IL, June 9, 2010. [HTML] [PDF]

The Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the compliance specification. Charges filed by International Union of Bricklayers and Allied Craftworkers, AFL-CIO, Illinois District Council No. 1. Members Schaumber, Becker, and Pearce participated.

Unpublished Board Decisions in Representation Cases

Heartland Health Care Center University (07-RD-3597) Detroit, MI, June 9, 2010. No exceptions having been filed to a Hearing Officer's report recommending disposition of objections to an election held February 12, 2010, the Board adopted Hearing Officer's findings and recommendations, and remanded proceeding to Regional Director for further appropriate action. Petitioner – an Individual.

Grocery Haulers, Inc. (3-RC-11944) Albany, NY, June 9, 2010. Order granting Intervenor's request for review of Regional Director's decision and direction of election. Petitioner – Teamsters Local 294, International Brotherhood of Teamster. Chairman Liebman and Members Becker and Pearce participated.

Otterbein Monclova, LLC (8-RC-17030) Monclova, OH, June 9, 2010. Order amending Decision to permit the quality of life coordinator to vote under challenge, and denying request for review in this and all other respects. Petitioner – United Food and Commercial Workers Union, Local 75. Chairman Liebman and Members Becker and Pearce participated.

AT&T Mobility (19-RD-3854) Redmond, WA, June 9, 2010. Order denying Petitioner's motion and the supplemental to motion to recuse Member Becker. Petitioner – an Individual.

Los Angeles Time Communications, LLC (21-UD-415) Los Angeles, CA, June 9, 2010. Order denying Petitioner's motion to recuse Member Becker. Petitioner – an Individual.

Aramark Uniform & Career Apparel, LLC (18-RD-2692) Fridley, MN, June 9, 2010. Order denying Petitioner's motion, supplemental motion, and second supplemental motion to recuse Member Becker. Petitioner – an Individual.

Chris Jensen Health & Rehabilitation Center, LLC (18-UC-429) Duluth, MN, June 9, 2010. Order denying request for review. Petitioner – American Federation of State, County and Municipal Employees Council 5. Chairman Liebman and Members Becker and Pearce participated.

Service Management Systems, Inc. (4-RC-21647) Moorestown, NJ, June11, 2010. No exceptions having been filed to Hearing Officer's report recommending disposition of objections to an election held March 4, 2010, the Board adopted Hearing Officer's findings and recommendations, directed that Regional Director open and count ballots. Petitioner – United Food and Commercial Workers Union, Local 152, a/w United Food and Commercial Workers International Union.

Decisions of Administrative Law Judges

Central Peninsula General Hospital (19-CA-31917, et al.; JD(SF)-22-10) Soldotna, AK. Charges filed by Laborers' International Union of North America, Local 341. Administrative Law Judge John J. McCarrick issued his decision June 7, 2010. [HTML] [PDF]

MV Public Transportation, Inc. (29-CA-29530, 29760; JD-34-10) Staten Island, NY. Charges filed by an Individual. Administrative Law Judge Michael A. Rosas issued his decision June 7, 2010. [HTML] [PDF]

International Brotherhood of Teamsters, Local 25 (1-CB-10882; JD-35-10) Charlestown, MA. Charge filed by an Individual. Administrative Law Judge Mark D. Rubin issued his decision June 7, 2010. [HTML] [PDF]

Fiskardo Estiatoria Inc. d/b/a Thalassa Restaurant (2-CA-38990, et al., JD(NY)-18-10) New York, NY. Charges filed by Individuals. Administrative Law Judge Eleanor MacDonald issued her decision June 9, 2010. [HTML] [PDF]

2 Sisters Food Group, Inc. (21-CA-38915, 38932, 21-RC-21137; JD(SF)-24-10) Riverside, CA. Charges filed by United Food and Commercial Workers International Union, Local 1167. Administrative Law Judge Lana H. Parke issued her decision June 10, 2010. [HTML] [PDF]